Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
High-cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

<u>CONSOLIDATED COMMENTS OF NTCH, INC.</u>

NTCH, Inc.

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To: The Commission

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NTCH, Inc. ("NTCH") submits these consolidated comments to the three Notices of Proposed Rulemaking captioned above. In NTCH's view, the reform of the USF system must be addressed comprehensively and integrally rather than in the piecemeal fashion which has too often characterized Commission policy-making in the past. We assume that the Commission will evaluate all comments in these three proceedings in a consolidated fashion, and therefore one unified comment is presented here.

SUMMARY OF COMMENTS

NTCH has offered a number of comments over the last year in response to the Joint Board's recommendations and other Commission initiatives. Our major proposals can be summarized into eight categories:

1. The current USF system is clumsy, wasteful, unfair, ineffective and inefficient. It needs not just a bit of tweaking here and there but a major overhaul. A radical reform would be to abandon the current dysfunctional system of multi-billion dollar

subsidies altogether and instead issue new spectrum on a discounted basis to carriers who are willing to assume the obligation of delivering phone service to high cost areas *without any subsidy*. This approach could easily be accomplished with the virgin 2155 MHz spectrum whose service rules are currently being considered.

2 If the Commission instead elects to stay with a system of long-term subsidies by American taxpayers to high cost carriers, the best approach is to use reverse auctions to select the one or two carriers willing to deliver services to high cost areas at the lowest price to the public. This would reduce the grossly excessive payments to LECs which now consume 75% of distributed USF funds while also limiting duplicative and unnecessary payments to an unlimited number of ETCs in every market.

3. The USF distribution process must be accelerated significantly no matter what system is adopted. The current practice of maintaining subsidies to LECs while denying funds to their competitors by inaction on ETC petitions directly contradicts the statutory mandate to maintain competitive neutrality.

4. LECs must stop being treated as sacred cows. The Commission must be disabused of the notion that LECs have some entitlement to huge subsidies that shield them from inefficiency and competitive pressures, while all other carriers are somehow "burdening" the system when they seek a small percentage of the USF pie.

5. Identical support to competing ETCs makes no sense. The public should only have to subsidize the minimum cost necessary to accomplish the job of getting reasonably priced telecommunications service to all parts of the country. The support level – whether for wireline or wireless carrier – should be based on the actual costs of the carrier willing to provide the needed services at the lowest cost as determined by the reverse auction process rather than through a cumbersome and costly audit arrangement.

6. All carriers should be weaned away from high cost support. In today's highly competitive market, there should be no reason for continuing high cost support longer than seven years. If both supported carriers indicated at the end of the seven years that they were not willing to continue service without a USF subsidy, the Commission would hold another reverse auction and provide

support for another seven years to only the one carrier bidding to provide the service at the lowest price. A wireless carrier which had indicated that it would not continue to provide service without a subsidy would lose its rights to provide service in the area if it did not win the reverse auction.

7. Broadband is not a service that needs to be, or should be, subsidized through the USF. There are plenty of commercially sustainable alternatives that can be expected to be delivered either without subsidies at all or through the rural telecom loan process.

8. The division of USF support into separate categories simply serves to entrench current vested recipients and detract from the principle of competitive and technological neutrality.

I. NEED FOR RADICAL CHANGE

The current USF system perpetuates a system of subsidies that everyone acknowledges has grown to enormous proportions. Because the cost is largely buried in the fine print of people's phone bills, they are hardly cognizant that they are paying what is in economic terms a tax (though not technically called that) of more than 10% of their monthly bill. The "tax" escapes the accountability of most taxes because the FCC says it's simply a charge levied on carriers which they can pass on or not; carriers, of course, do pass the charges on to customers as "government–imposed surcharges." This way neither the carriers nor the government take responsibility for imposing the billions of dollars in charges, but the American people still end up paying the tab. The Joint Board rightly expresses alarm at how large the USF funding obligation has grown, but it offers no solution to the real problem of reducing the overall costs of support for both LECs and wireless carriers. Instead, it focuses myopically on the rapid growth of the relatively small proportion of the fund that goes to wireless carriers while preserving indefinitely the much greater percentage of the support that goes to LECs. The idea of changing the support system entirely did not even occur to the Board.

NTCH proposed in the 700 MHz proceeding a radical new approach which the Commission has not yet addressed. Given that the available 700 MHz spectrum has already been auctioned off, it is unlikely that the Commission will apply this proposal now to that band. However, the 2155 MHz band would also be perfectly suitable for this purpose and remains available. This large block of newly virgin spectrum is fortuitously coming available just at the moment that the USF support system is being evaluated for much needed overhaul. The approach involves dropping the current subsidization system and instead designating a band of spectrum which would be auctioned at a discounted price to carriers who are willing to assume the burden of providing supported services to high cost areas.

The Commission recognized in the 700 MHz proceeding that it can achieve worthwhile social goals by attaching conditions to the award of licenses. The C Block auction was successful, the D Block a failure, but only because the conditions imposed on the D Block licensee were so open-ended and so burdensome as to chill interest. The Commission could learn from that experience in using the 2155 MHz spectrum to meet high cost needs. Specifically, the Commission should condition the grant of the 2155-2175 license on the licensee providing supported services to its service area and offering discounted wholesale service to other designated ETCs in the EA to which the block is assigned. ETCs are a matter of record, and there are a limited number who would qualify for this benefit. (The number of qualified ETCs may in fact drop if the Commission adopts a "reverse auction" approach to ETC designation as a way of eliminating duplication and waste in the provision of basic services supported by the USF.) The specified discount rate would be 50% of the licensee's best retail rate or 50% of the national average of such rates, whichever is lower.

The *quid pro quo* for the ETCs' receipt of this beneficial rate is that they would have to provide all supported services in their area, including broadband (if that is added to the supported list), without any further support from the USF funding mechanism. The 2155 MHz spectrum should be more than adequate for the ETC to provide all supported services. The 2155 MHz licensee would essentially become the provider of last resort, while the wholesale requirement would ensure that other ETCs could also provide supported services. This would ensure the continued availability of high quality, advanced communications capabilities to the rural and high cost areas which now receive supported services, but a much lower cost. With one stroke, the Commission could eliminate the payment of 4 billion dollars year after year by the American consumer without any loss in service to the targeted populations.

To be sure, the plan would not be without some cost. Just as with the 700 MHz C Block and D Block, the obligation to comply with regulatory conditions would dampen somewhat the amount that parties will be willing to bid for the 2155 MHz license. Even if the high bids obtained by the Commission were 30 - 40% lower than might otherwise have been anticipated, however, the immediate loss to the treasury would only be a billion dollars at most, while the benefits to the public would be four or five times that amount in the first year alone. And the "hit" to the treasury would be a one time hit while the savings to the public would recur in perpetuity. Because the auction bidder would have factored this obligation into the amount of its bid, it would have no complaint about either the price it paid or the ongoing obligation to provide the discount. (Of course, build-out obligations would apply, thus ensuring that licensees build out the undesirable areas that are most likely to be eligible for supported services.) Similarly, ETCs would understand upfront what their obligations are and how they would have to arrange their affairs to deliver the required services. (Existing ETCs who have grown accustomed to relying on the USF handouts alone could withdraw from the ETC system.)

Adoption of this plan would eliminate or significantly reduce[1] an entire bureaucratic regimen and enormously simplify the process of assuring that affordable service is provided to all Americans. If the Commission adopted this bold expedient, it could eliminate 90% of the analysis of other approaches and move forward very quickly to licensing and service. The Commission should not miss this historic opportunity to harness a portion of this spectrum block to permanently solve the problem of ensuring high quality telecommunications services to high cost areas at a fraction of the cost of the current system.

II. REDUCE THE NUMBER OF CARRIERS ELIGIBLE FOR SUPPORT

The Joint Board rightly recognized that one factor in the size and growth of the USF is the need to support multiple competing carriers. This situation arises because no carrier or technology can be favored but no carrier or technology has been excluded. This approach to support ignores the basic purpose of USF support in the first place. The object of the subsidy is not to prop up high cost legacy companies and technologies or assure their profitability, nor to add to the profits of wireless carriers. The point of the whole exercise is to assure that telephone consumers in regions where the cost of service is inordinately high by national standards still have access to those services at affordable rates: "Consumers should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are

[1] We assume that some subsidization process and infrastructure would remain in place to handle the schools and libraries and other programs subsidized by the USF. But these programs are dwarfed by the costs of supporting high cost service.

available at rates that are reasonable, comparable to rates charged for similar services in urban areas." Section 254 (b)(3) of the Communications Act. It is this statutory objective that must be the driving force in the Commission's universal service plan.

The unpleasant truth is that it really takes only one provider of telecommunications services to deliver the services specified by the Act. In an ideal world, the public should only have to subsidize one carrier to be sure that consumers are afforded comparable services at comparable rates. While one point of view argues that every carrier should be subsidized based on the number of customers that carrier signs up, this superficially appealing policy results in multiple carriers investing in the infrastructure necessary to serve customers who would, by definition, not otherwise be economically viable customers. The current policy of awarding subsidy dollars based on who has the customer is exactly like addressing the housing needs of a small twenty-family town in Oklahoma by having two, three or four companies go out to the town and construct apartment buildings. A subsidy is then provided to each company based on how many families take up lodging in that company's building. You end up with greatly overbuilt and unnecessary capacity when really a single subsidized building would have been fully sufficient to meet the people's needs. The waste inherent in this system necessarily adds to the "high cost" of providing living accommodations to the residents.

The key to making a one-provider system work, however, is to ensure that the sole provider is providing the service at the lowest cost. The Joint Board seems to accept this principle in the context of wireless carriers but for some reason fails to apply that same principle to LECs. NTCH subscribes to the concept of awarding support on a least cost basis, but only if that principle is applied across the board to wireline and wireless carriers alike. It may be that wireline carriers have already built out their facilities to serve high cost areas based on historical subsidies they received under the ancient "separations" process or under the USF system to date. These LEC subsidies have totaled well over twenty billion dollars just since the USF system came into being. Of course, many LECs had been fully constructed and operational for decades, so their capital infrastructure costs should be relatively low at this point. On the other hand, to serve or expand service to remote areas, it may be more cost efficient for wireless carriers to deliver service without having to string wire and erect poles. Whichever carrier could do the job most cheaply should be charged with providing the service and should get only the subsidy necessary to offer the service at a rate comparable to urban areas.

Of course, we do not live in an ideal world, and that is why NTCH proposes a competitive situation for seven years followed by a termination of support unless the result is that no carrier remains in the market. Under NTCH's plan, a reverse auction would be held in which all carriers (CETCs, LECs, wireless carriers, and, if they wished, satellite carriers) could bid to receive low cost support to provide service on a CMA by CMA basis. Since wireline carriers often are not certificated along county lines, it might be necessary for them to partner with neighboring LECs in order to make a proposal to serve an entire CMA. This would permit apple to apple comparisons.

In the auction, the bidders would compete to set the lowest level of subsidy (measured per pop over the entire CMA population) that they would accept to deliver the services specified as deserving support. Any bidding carrier would automatically be deemed an ETC since it would by definition be committing itself if successful to providing the supported services. The subsidy level so established would then be awarded to the LEC (if it chose to participate) and the lowest bidding CLEC. The low bidder would *have* to carry through on its commitment to provide the supported services; the second carrier, who had not committed to provide service at the winning level, could opt not to accept the subsidy, in which case it would be offered to the other bidding carriers. After seven years, the infrastructure would be sufficiently built-out through USF subsidies that further subsidies could be eliminated.

One potential problem with reverse auctions is that a facilities-based carrier in the market such as a LEC whose facilities would be needed by other bidders for backhaul purposes could artificially increase the rates it charges for such services. This would increase the overall cost to competing bidders of providing services in the market. The monopoly provider, of course, would not care what the charges for such network services were since it would be paying the rates to itself. Unless prevented, the result would be that competing bidders would have to bid a higher amount in the auction *vis a vis* the monopoly provider because their actual costs of this service component would effectively be higher. To guard against artificial elevation of cost components by competing bidders to skew the auction, the Commission should provide (1) that backhaul charges proposed by a monopoly provider be just and reasonable, (2) that they be publicly available, and (3) if the charges are deemed excessive[2] upon complaint by a competing bidder, the monopoly provider would be disqualified from receiving any USF high cost subsidy. These measures should sufficiently incentivize the monopoly provider to avoid auction manipulation.

III. EXPEDITING THE PROCESS

The current situation is grossly unfair to CLECs of all ilks who often wait years for the FCC to act on ETC petitions. The 1996 amendments to the Communications Act plainly envisioned ETCs being designated by states or the FCC to receive and apply USF funds. By simply sitting on ETC petitions or study area redefinitions, the Commission is not only thwarting the intent of the Act, but is providing an overwhelming competitive benefit to LECs. These carriers have been enjoying the subsidy for years while their direct competitors who could well provide better and cheaper service to the same customers, cannot get the Commission to act on their ETC petitions. The Commission has used this delaying process to

[2] The rates would be presumed excessive (subject to rebuttal by the carrier) if the rates were more than 15% higher than the carrier charged for similar services prior to the auction.

effectively stop the flow of USF funds to deserving ETCs, while at the same time maintaining historically high levels of support to ILECs. It is impossible to view this "deep sixing" of ETC petitions as anything but unlawful since it indisputably violates the Congressional intent and the Commission's own policy of technological neutrality.

Section 102 of the 1996 Act provided that "a State commission shall upon its own motion or upon request designate common carrier that meets [the specified requirements] as an eligible telecommunications carrier for a service area designated by the State commission." While this designation in rural areas is subject to a finding that it is in the public interest, the Commission has already determined that competing ETCs are in the public interest, so there is little for the State commission to decide. And, of course, where the state commission has disclaimed jurisdiction, the Commission could very easily grant ETC petitions to carriers who have pledged to meet all of the Commission's requirements. The process should be virtually automatic rather than taking years as it does now. Given the direct statutory mandate for states and the FCC to designate ETC's upon request, the failure to do so cannot be condoned.

Either of the two approaches suggested above would solve this problem by making the ETC designation automatic with either the award of 2155 MHz license or the winning of the reverse auction. There would be no need for further ETC processing. If those approaches are not adopted, however, the Commission should act immediately to grant ETC petitions.

IV. SPECIAL TREATMENT FOR LECS

The main obstacle hindering USF reform at the moment is the perception by the Commission that it must somehow maintain the subsidy system that has filled the coffers of rural LECs for years. Until the Commission looks at that system with eyes fully open, it cannot fairly devise the reform that is needed. For example, even though the statistics show that LECs have reaped more than 88 % of the 22.7 billion dollar USF fund since 2000, the Commission continually expresses alarm at the relatively minimal $2.7 billion that has been grudgingly distributed to CLECs. Shouldn't there be some inquiry into whether the $20 billion has really been spent wisely? By assuming the mantle of apple pie, rural LECs have succeeded in making the USF subsidy an entitlement program regardless of the validity of the public policy underlying the subsidy. As we have noted above, it is relatively easy to continue this huge subsidy since everybody pays for it through their phone bills and nobody complains that much. But that is no reason for policymakers to continue a policy which (1) encourages gold-plating of service, (2) discourages innovation and cost-cutting by the recipients, and (3) favors one relatively outmoded technology over other, more modern and efficient technologies. The Commission's touchstone, as always, should only be to ensure that rural customers pay only as much for phone service as their urban cousins. Nothing in the Act or public policy suggests that maximizing the profits of rural telcos (who these days are often owned not by cooperatives but by big-city investment firms) should be the object of the USF program.

V. ELIMINATION OF IDENTICAL SUPPORT

The one thing that virtually all stakeholders, the Joint Board, and the Commission agree on is that the identical support system should be abandoned. It plainly makes no sense to provide cost support without reference to what the costs actually are. That is why the reverse auction procedure is a sensible solution. It establishes a cost support level based on a real, market driven analysis by the involved carriers as to how much support they really need to be able to provide the service. However, in order for this system to work, it must embrace both the LEC and the non-LEC carriers. This simple expedient should serve to staunch the flow of USF funds since LECs will have to get reasonable about the amounts of money they really need or risk not getting the subsidy at all, while the competing carriers would only be subsidized at that level, which by definition is the lowest cost level. Competitive pressures in this context will serve to drive the claimed costs of carriers down toward their real costs. But the entire benefit is lost if the single greatest drainers of the USF fund – LECs – are for some reason excused from this exercise.

VI. PHASE OUT USF SUPPORT

The Joint Board floated the novel idea of phasing out the support for wireless carriers "once the objectives of geographic coverage in a market have been met." Recommended Decision at Para. 38. As noted above, NTCH believes that this approach has a great deal of merit. Again, however, the merit is lost if it is only applied to wireless carriers and not LECs. LECs have been receiving subsidies, whether explicit or implicit, for well over fifty years. By now you would think that the infrastructure costs of providing service in these markets had long been incurred and fully amortized.

The communications market in the United States has become sufficiently competitive that in many areas, including quite rural ones, there are as many as eight providers of phone service. This number may grow as broadband and cable providers increasingly provide voice as a part of their service packages. In other words, the classic high cost subsidy situation where there is a single Mom and Pop-owned rural telco struggling to provide sole service to its customers is as outdated as the Bedford Falls of "It's a Wonderful Life." The wide – and ever widening – availability of wireless phone service and the expansion of cabled offerings into the telecom sphere has undercut very substantially the continuing need for subsidies, particularly on the massive scale that the American public continues to shoulder. If private companies are willing to provide adequate phone service without a subsidy, why is a subsidy necessary? That is why we agree with the Joint Board that carriers – *all carriers* – must be "weaned away" from dependence on subsidies and made to stand on their own two feet.

To be sure, there are and will be some geographic areas where, despite all the efforts the Commission has made to expand wireless service over many different spectrum bands (cellular, PCS, AWS, SMR, and now 700 MHz), there will still be only one carrier due to the high cost of providing service. In those instances where there is only one carrier willing to provide service, continuation of the subsidy is appropriate and should continue for at least two seven year terms, as explained below. In situations where there are two carriers receiving support at the end of the first seven year period, they would have to declare whether they were willing to continue providing service without support. If neither was willing to do so, another reverse auction would be held between those two providers and the low bidder alone would continue to receive support for another seven year term. If the wireless carrier in this situation indicated that it was not willing to provide service without support and did not win the reverse auction, it would forfeit its license to provide service in that area. But these situations are likely to be relatively few, and the burden on other ratepayers in the country will be reduced enormously by phasing out the subsidy program. Seven years should be more than ample for current recipients to arrange their affairs so as to be able to deal with non-subsidized operation.

If NTCH's reverse auction were adopted, then, the process would work like this:

- an auction would be scheduled with at least four months of lead time to permit potential bidders to calculate what level of subsidy they would require to provide the supported services in each CMA. The auction notice would include a list of the CMAs deemed to be high cost areas where support is warranted.

- Bidders would be limited to carriers with radio licenses or wireline certificates to provide service in the CMAs being auctioned.

- Each bidder would submit a single sealed bid indicating the amount of subsidy per pop it would require. (The use of a single sealed bid auction incentivizes bidders to make their best and lowest bid up front or risk losing entirely.)

- The low bidder would automatically be deemed an ETC and would be required to provide all supported services for seven years. If there were only one bidder, that bidder would be subsidized at its bid level. The second lowest bidder would have the option of receiving USF support (and becoming an ETC) at the same level as the winner for seven years but would not be required to provide service if it chose not to.

- Near the end of the seven year term, the USF recipients would be required to declare whether they would continue to provide service without a subsidy. If one or both carriers would do so, they would continue to provide the same service as before but without a subsidy. If no carrier was willing to do so, another reverse auction would be held between those two carriers, with only the low bidder receiving another seven year subsidy. If there were only one carrier receiving support, no further auction would be held at this time; the carrier would continue to receive support at its initial level for another seven years.

- At the end of the second seven year period, if the sole provider was not willing to provide service on an unsubsidized basis, a new reverse auction would be held in which any eligible licensee or phone service provider could participate, and the cycle would proceed as before.

VII. BROADBAND SHOULD NOT BE A SUPPORTED SERVICE

The Joint Board recommends adding broadband to the list of supported services. While this is a close call, we feel that at this time, the addition of broadband would be a mistake for many reasons. First, the Joint Board made no effort to, and had no basis in the record for, quantifying how much the addition of broadband would cost. Though expressing grave concerns about the rapid growth in the costs of the Fund, the Board did not even hazard a guess at how much this might cost. We can safely estimate, however, that the costs of upgrading all of the physical plant used by just the existing ETCs (whether wireline or wireless) to accommodate broadband would require at least a doubling of the current investment in plant. This investment and, indeed, this undertaking, would be huge and would probably require a doubling of the current USF fees. Second, the Joint Board itself estimates that 99.6% of zip codes in the US are already being served by one high speed internet provider. If that is the case, it appears that the market is doing quite well in delivering broadband to the people without any need for a subsidy. The build-out conditions attached to the recently auctioned 700 MHz licenses should serve as a further incentive to expand broadband coverage to even more areas, often adding a second, third or fourth broadband provider to the market. Third, given these developments, it is, at a minimum, premature to initiate a subsidy program for broadband. Left to market forces, we might well see a perfectly acceptable and affordable distribution of broadband services to even the most rural parts of the country. Fourth, subsidized loans for broadband deployment are available through the federally financed rural broadband access initiative. This source of subsidized funds should be tapped before handouts from the public are resorted to. All of this suggests that we should let the broadband market work by itself for a few more years and then revisit this issue to see if support is needed to bring the benefits of broadband to a few remote regions.

In the event that the Commission does decide to include broadband as a supported service, the currently available subsidies from RUS (whether as low rate loans or grants), should be counted into the subsidy equation. That is, any grants received by a carrier through the RUS broadband program should deducted dollar for dollar from the amounts that would otherwise be received from the USF. The value of any loan discount from the commercial credit rate should also be deducted from the USF subsidy. This will prevent "double-dipping" at the public trough.

VIII. BREAKING THE FUND IN SUBCATEGORIES WOULD BE COUNTER-PRODUCTIVE

The Joint Board proposes breaking the USF fund into separate subfunds. While we have no objection per se to the three fund concept, it is unclear what positive benefits such a division would yield. In our view, the entire fund should support Providers of Last Resort since it is only in areas where unsubsidized service will not be possible at reasonable cost that USF support is needed – and then only to one carrier. As we noted above, there should not be a Broadband Fund at all for the time being. And the Mobility Fund seems misplaced since it segregates out one technology for disfavored treatment instead of treating all telecom providers as fungible. Creating three funds probably will also create three times the bureaucracy necessary to administer the funds, as well as fostering rivalries and tensions between and among the funds. What we need now is an integrated view of the telecom market as cable, wireless, internet, and wired communications converge. The erection of artificial barriers between these increasingly indistinguishable forms of communications takes us back to 1934 rather than forward into the new century.

CONCLUSION

The USF system desperately needs radical reform, but the tepid proposals of the Joint Board will not solve anything, and may indeed exacerbate current problems. What is needed is bold thinking by the Commission to move to an entirely different paradigm to ensure that telecom service remains available and affordable for everyone in the United States.

Respectfully submitted,

NTCH, Inc.

By_________/s/_______________
Glenn Ishihara
President

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